



April 14, 2005

Morning Floor Statements:

[Senator McConnell: Minority Threats to Shut Down Government Counterproductive](#)

Press Statements:

[Senator Thad Cochran Announces Support for Ending Judicial Filibusters](#)

[Santorum Responds to Schumer, Durbin Judges Comments](#)

[Frist Unveils Judicial Nominations Webpage](#)

Today's Action:

The Senate Judiciary Committee approved the following nominees:

- Thomas B. Griffith to be U.S. Circuit Judge for the District of Columbia Circuit by a vote of 14-4
- Robert J. Conrad, Jr. to be U.S. District Judge for the Western District of North Carolina by voice vote
- James C. Dever, III to be U.S. District Judge for the Eastern District of North Carolina by voice vote.

The Committee also burned holds on the following nominees and will consider them during the next Committee mark up on April 21:

- Terrence W. Boyle, II to be U.S. Circuit Judge for the Fourth Circuit
- Priscilla R. Owen to be U.S. Circuit Judge for the Fifth Circuit
- Janice Rogers Brown to be U.S. Circuit Judge for the District of Columbia Circuit

Myth vs. Fact:

Myth: Filibusters of Judicial Nominations Are Based on the Constitution

Fact: Senate debate is governed by Senate rules, not by the Constitution. The Senate's Constitutional role to advice and consent is in fact being impaired by the unprecedented use of partisan filibusters to block confirmation votes.

In 1998, Sen. Leahy said promptly confirming judges was the Senate's "Constitutional responsibility." "We must redouble our efforts to work with the President to end the longstanding vacancies that plague the federal courts and disadvantage all Americans.

That is our Constitutional responsibility.” (Sen. Patrick Leahy, *Congressional Record*, 9/8/99, p. S10544)

- Leahy In 1998: “Acting to fill judicial vacancies is a Constitutional duty that the Senate – and all of its members – are obligated to fulfill. In its unprecedented slowdown in the handling of nominees in the 104th and 105th Congresses, the Senate is shirking its duty. This is wrong and should end.” (Sen. Patrick Leahy, *Congressional Record*, 7/17/98, p. S8477)

Sen. Charles Schumer (D-NY) said government does not fulfill its “Constitutional mandate” when judicial nominees do not receive a vote. “The basic issue of holding up judgeships is the issue before us, not the qualifications of judges, which we can always debate. The problem is it takes so long for us to debate those qualifications. It is an example of Government not fulfilling its Constitutional mandate because the President nominates, and we are charged with voting on the nominees.” (Sen. Charles Schumer, *Congressional Record*, 3/7/00, p. S1211)

- Schumer In 2000: “[W]e are charged with voting on the nominees. The Constitution does not say if the Congress is controlled by a different party than the President there shall be no judges chosen.” (Sen. Charles Schumer, *Congressional Record*, 3/7/00, p. S1211)

FLOOR SPEECH BY SENATOR MCCONNELL **Minority Threats to Shut Down Government Counterproductive**

WASHINGTON, D.C. – U.S. Senator Mitch McConnell delivered the following speech today on the Senate floor on the Democratic filibustering of judicial nominees:

“Mr. President, we as senators have an enormous amount of work to do for the American people. For example, while our economy is strong, unfortunately gas prices are way too high. People are feeling those costs every time they fill up at the pump. This Senate needs to seriously address a long-term energy policy for this country, and reduce our dependence on foreign oil.

“We have serious work to do to reform America’s tax code, so it is fairer for all Americans, and leads to a more robust economy.

“We have undertaken a debate on how to reform Social Security so it is stronger and more secure for future generations, as it has served millions so well already over the last 70 years.

“Our road system needs improving. Millions of Americans take to the roads everyday to get to work and keep this country moving. It’s critical the Senate pass a highway bill.

“In short, Mr. President, we have a formidable agenda before us. I welcome that challenge. I think that our constituents sent us here to get things done, not just to sit in these fancy chairs. But the nation’s business may soon come to an abrupt halt.

“In the face of so much important work to be done, sadly, my Democratic friends on the other side of the aisle are promising to pull the plug on this chamber, and thus shut down the government. Just because a majority of Senators want to restore the 200-year-old norms and traditions of the Senate, by granting a president’s judicial nominees who have majority support the simple courtesy of an up-or-down vote, my colleagues on the other side of the aisle are threatening to stop this Senate dead in its tracks.

“An energy bill to begin to address the high cost of gasoline and reduce our dependence on foreign oil?

“Forget it.

“A highway bill, to begin desperately needed repairs on bridges and roads across the country?

“Not a chance.

“These and other priorities will not happen, Mr. President, if the Democrats shut down the government. Because they cannot have what no Senate minority has ever had in the 229-year history of our country—the requirement of a supermajority for confirmation—they will threaten to shut the government down.

“The American people by now must rightly be asking, “How did we get in such a mess?”

“It was not by accident. The Democrats did not stumble into this position. It was carefully conceived.

“Four years ago, in May of 2001, the *New York Times* reported that 42 of the Senate’s then-50 Democrats attended a private weekend retreat in Farmington, Pennsylvania, to discuss a plan of attack against the President’s judicial nominees.

“According to this article, the unprecedented obstruction by the other side is not based on checks and balances, or the rights of the minority. It is about ideology. The Democrats invited speakers to their retreat who warned them that President Bush was planning to, quote, “pack the courts with staunch conservatives,” unquote.

“Now, here’s the clincher. According to the *New York Times*, one participant said, quote, “it was important for the Senate to change the ground rules, and there was no obligation to confirm someone just because they are scholarly or erudite,” unquote.

“Let me make sure that last part came through loud and clear. The Democrats are accusing the Republicans, who merely want to restore the 200-year-tradition of giving

judicial nominees with majority support an up-or-down vote, of some kind of power grab. Yet here is a four-year old admission that it is the Democrats who are clearly out to “change the ground rules.”

“That says it all. If a minority of the Senate does not get its way in obstructing judges from serving on our nation’s federal courts, they will “change the ground rules.” They will shut down the government. I say to my friends, “Please don’t take the extreme step of shutting the government down.”

“I would like to enter this *New York Times* article of May 1, 2001 into the Record.

“Now, the record about “who” is out to change “what” is not merely confined to the statements from this article. No, Mr. President, we’ve got four years of behavior to corroborate these statements.

“Soon after that Democrat retreat, and continuing to this day, we have seen our Democratic friends make major changes in the Senate’s “ground rules” for confirming qualified judicial nominees.

“For example, almost immediately the Democrats began to litmus-test judges in order to strain out the ones they considered “too conservative.” When they controlled the Judiciary Committee in the 107th Congress, they even held hearings on using “ideology” in the confirmation process in an effort to legitimize their practice of litmus-testing judges.

“The Democrats have widely-applied their litmus tests. They have filibustered almost one circuit court nominee for every three they have confirmed. As a result, in his first term, President George W. Bush had only 69% of his circuit-court nominees confirmed. That is the lowest confirmation percentage of any president since World War II.

“In addition, the Democrats began to demand that they in effect get to co-nominate judges along with the President. The Constitution clearly provides in Article II, Section 2, that the President, and the President alone, nominates judges. The Senate is empowered to give “advice and consent.” The Democrats, however, have sought to redefine “advice and consent” to mean “co-nominate.”

“President Bush, rightly so, has not acceded to this attempt to upset our Constitution’s separation of powers. Unfortunately, the administration of justice is suffering. In the case of the Sixth Circuit, for example, Democratic Senators are willing to let one-fourth of the circuit seats sit empty in order to enforce their demands. As a result, the Sixth Circuit, which includes Kentucky, is far and away the slowest circuit in the nation. My constituents and the other residents of the Sixth Circuit are the victims. Thanks to the other side’s obstruction, Kentuckians know too well that justice delayed means justice denied.

“The Democrats have changed other “ground rules” in the confirmation process, Mr. President. But all these changes were just precursors to what happened in the last Congress. In 2003, Democrats instituted the ultimate change in the Senate’s ground rules: they began to obstruct, via the filibuster, on a systematic and partisan basis, well-qualified nominees who commanded majority support. That is unprecedented in over 200 years of Senate history.

“Republicans did not filibuster judicial nominees, even though it would have been easy for us to do so. Let me give you the names of some very controversial Democratic judicial nominees whom we could have easily filibustered. Richard Paez. William Fletcher. Susan Oki Molloway. Abner Mikva. None of these nominees had 60 votes for confirmation.

“Other controversial Democratic nominees, like Marsha Berzon, barely had 60 votes for confirmation, but we did not whip our caucus to try to filibuster them either. Indeed, just the opposite occurred: Senators Lott and Hatch, to their great credit, argued that we ought not to set such a precedent, no matter how strongly we oppose the nominee.

“Our friends, the Democrats, are driving a double standard: The nominees of a Democratic President only had to garner majority support, as had every other judicial nominee in history until Democrats sought to change the ground rules. But nominees of a Republican President have to get a much higher level of support. That is hypocrisy, Mr. President, pure and simple.

“Because the majority may seek to restore the norms and traditions of the Senate—norms and traditions that my Democratic friends have upset—the Democrats are now threatening to shut down the government. That’s not right.

“We need to recommit ourselves to the 200 year principle that in a democracy an up or down vote should be given to a president’s judicial nominees. It’s simple. It’s fair. It’s been that way for over two centuries. And it’s served us well.”

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Santorum Responds to Schumer, Durbin Judges Comments

Washington, D.C.-Senator Rick Santorum (R-PA), chairman of the Senate Republican Conference, today issued the following statement in response to remarks on the judicial filibusters debate made at a press conference held by Senators Chuck Schumer (D-NY) and Dick Durbin (D-IL).

"The Senate Majority believes in a fair and independent judiciary. The Constitution demands it. The Constitution also outlines the duty of all Senators to vote up-or-down on judicial nominations."

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FRIST UNVEILS JUDICIAL NOMINATIONS WEBPAGE

WASHINGTON, D.C. – U.S. Senate Majority Leader Bill Frist, M.D. (R-TN) today announced that his Senate website is now featuring an enhanced and in-depth section focusing on judicial nominations.

“The Senate has a constitutional duty to provide advice and consent to the President on judicial nominations,” said Frist. “Historically, Senators fulfilled this duty by a simple majority vote of the full Senate. However, recent actions by a minority of Senators have changed this precedent and, not just delayed, but blocked these votes from ever occurring. We are working to restore more than 200 years of Senate tradition under the Constitution. As a matter of fundamental fairness, nominees who are highly qualified deserve an up-or-down vote on their nomination in the Senate. This web page will provide a one-stop information resource to explore the facts about the judicial confirmation process, the judicial filibuster, and the Constitutional option.”

The webpage includes press releases, statements, links to articles, a timeline and copies of speeches that provide an honest accounting of the debate over a president’s judicial nominations. The site will be consistently updated and allow citizens to receive the hard facts about the debate. The page can be accessed through the frontpage of Frist’s official Senate site at <http://frist.senate.gov>.

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Senator Thad Cochran Announces Support for Ending Judicial Filibusters

Washington, DC – Senator Thad Cochran (R-MS) announced his support today for Majority Leader Frist’s plan to end filibusters in blocking judicial nominees.

Senator Cochran offered the following statement Thursday morning to the Senate regarding the use of filibusters to block judicial nominees:

“The continued controversy over Senate confirmation of federal judges needs to be resolved. It promises to hang as a cloud over the Senate unless we reach an understanding of the appropriate role of the Senate.

“I had been hopeful that the Senate leadership would be able to resolve this issue by reaching an agreement that would be acceptable to both sides. However, that does not now appear likely.

“Therefore, I have advised the distinguished Majority Leader, Mr. Frist, that I will support him in his effort to bring this confrontation over judicial filibusters to an end.

“There should be no question in anyone’s mind about my intentions. I will work in concert with our leader, and with the distinguished Majority Whip, Mr. McConnell, to end filibusters of judicial nominations in the Senate.”

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